

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MICHAEL KEVIN DUPONT
Petitioner,

V.

DAVID NOLAN
Respondent.

Civil Action No. 04-11431-GAO

ANSWER

Pursuant to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, the respondent hereby answers the petition for writ of habeas corpus of the petitioner Michael Kevin Dupont.

1. Admitted.
2. Denied. Answering further the respondent states that the petitioner pleaded guilty on December 13, 1999.
3. Denied. Answering further the respondent states that the petitioner was sentenced to twenty years to twenty years and a day on the armed robbery conviction, a concurrent sentence of five to ten years on the armed assault with intent to kill and assault and battery by means of a dangerous weapon convictions, and a concurrent term of three to five years on the illegal possession of a firearm and assault by means of a dangerous weapon convictions.
4. Admitted.
5. Admitted.
6. Not applicable.
7. Admitted.

8. Admitted.

9(a)-(b). Admitted.

9(c). Denied. Answering further the respondent states that the citation for the Appeals Court opinion is 59 Mass. App. Ct. 1102 (2003).

9(d). Admitted.

9(e)(1)-(2). Admitted.

9(e)(3). Admitted. Answering further, the respondent states that the citation of the denial of further appellate review is 441 Mass. 1101, 803 N.E.2d 332 (2004)

9(e)(4). Denied.

9(f). The respondent states that he lacks knowledge or information sufficient to admit or deny the allegations contained in paragraph 9(f).

10. Admitted.

11(a)(1)-(2) Admitted.

11(a)(3). The respondent states that he lacks knowledge or information sufficient to admit or deny the allegations contained in paragraph 9(f).

11(a)(4)-(6). Admitted.

11(b). Left blank by petitioner.

11(c). Admitted. Answering further the respondent states that the citation for the Appeals Court's decision is 59 Mass. App. Ct. 908, 794 N.E.2d 1254 (2003).

12. The respondent states that paragraph 12 contains legal argument and conclusions to which no response is required. To the extent that a response is deemed necessary, the respondent denies the factual allegations contained in paragraph 12 of the petition insofar as they are inconsistent with the facts found by the Massachusetts Appeals Court in *Commonwealth v. Dupont*, 59 Mass. App.

Ct. 1102, 795 N.E. 2d 12 (2003).

13. Left blank by petitioner.

14. Left blank by petitioner.

15(a)-(g). Admitted.

16. Admitted.

17. The respondent lacks the knowledge or information sufficient to admit or deny the allegations contained in paragraph 17.

And further answering the respondent has obtained transcripts from the motion for new trial hearing, and various other guilty plea and sentencing hearings, which will be supplied to the Court whenever deemed necessary. Pursuant to Rule 5 of the Rules Governing 28 U.S.C. §2254 cases, the respondent is filing a Supplemental Answer with the following documents from the petitioner's state court proceedings:

VOLUME I

1. Brief for Appellant on Appeal to the Massachusetts Appeals Court (02-P-20).
2. Appellant's Appendix Volume I
3. Appellant's Appendix Volume II
4. Appellant's Appendix Volume III
5. Appellant's Appendix Volume V
6. Appellant's Appendix Volume VIA

VOLUME II

1. Brief for the Commonwealth of Massachusetts on Appeal to the Massachusetts Appeals Court (02-P-20)
2. Commonwealth's Supplemental Appendix Volume I
3. Commonwealth's Supplemental Appendix Volume II
4. Commonwealth's Supplemental Appendix Volume III
5. *Commonwealth v. Dupont*, 59 Mass. App. Ct. 1102, 795 N.E.2d 12 (2003)
6. Application for further appellate review, FAR No. 13844
7. *Commonwealth v. Dupont*, 441 Mass. 1101, 803 N.E.2d 332 (2004) (further appellate review denied)
8. Docket Sheets, *Dupont v. Commissioner of Correction*, et al, WOCV 2001-00209
9. *Dupont v. Commissioner of Correction*, 59 Mass. App. Ct. 908, 794 N.E.2d 1254 (2003)
10. Application for further appellate review, FAR No. 13845
11. *Dupont v. Commissioner of Correction*, 441 Mass. 1102, 803 N.E.2d 333 (2004)(further appellate review denied)

DEFENSES

1. The petition contains grounds that have not been exhausted in the state courts.
2. The petition raises claims based purely on state law which are not cognizable on federal habeas review.
3. In the alternative, the state court adjudication of the petitioner's claims was not contrary to or an unreasonable application of clearly established Supreme Court law nor was it based on an unreasonable determination of the facts in light of the evidence presented in the state court.

The respondent respectfully reserves the right to amend or supplement this Answer in the future should the need arise.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s Susanne G. Reardon
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the attached documents was served upon Michael Kevin Dupont, pro se, P.O. Box 100, S. Walpole, MA 02071, by first class mail, postage pre-paid, on August 20, 2004.

/s Susanne G. Reardon
Susanne G. Reardon
Assistant Attorney General